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IN THE

Supreme Court of the United States

No. 969

NELSON BRYANT, et al.,

Petitioners,

v.

CHARLES K. MOORE, et al.,

Respondents.

APPLICATION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

SCOTT H. RAY, JR.
8 S. Broadway
Lebanon, Ohio

LOUIS C. CAPELLE
505 Walnut Street
Cincinnati, Ohio
Attorneys for Petitioners.

THE JOHNSON & HARDIN CO. LAW PRINTERS
CINCINNATI, OHIO

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I. Petition For Writ of Certiorari Denied

On May 20, 1964, Petitioners received notice from the clerk that their Petition had been denied on May 18, 1964. As in the Supreme Court of Ohio, the notice did not specify any reason for the denial.

II. Denial A Gross Error and Miscarriage of Justice

All that Petitioners have sought in the multifarious proceedings now past is the opportunity to seek redress of their grievances in a court of law as provided by law. Petitioners in seeking redress have not only complied with the spirit of the law but also to the literal letter of the law.

The law in question[1] provides for redress of grievances upon petition. However, though petitioners have petitioned according to the applicable law they have not received redress nor even a hearing upon the grievances for which they seek redress. Their attempts to seek review from the appellate courts of the alleged injustices have been equally unrewarding.

III. The Issue Appears on the Face of the Record

The Warren County Common Pleas Court stated that Petitioners had failed at any time to set the matter for trial and as a result the matter was not heard within the time specified by statute and therefore Respondents were entitled to a dismissal.[2]

This finding by the court is untrue, it is erroneous and is shown to be erroneous upon the face of the record contained in this appeal.[3] Scott H. Ray, Jr., Attorney for Petitioners, prepared an entry ordering service of the Petition upon Contestees and setting the election contest for trial on a day certain. Simultaneous to the filing of the petitions, Scott H. Ray, Jr., requested of the Assignment Commissioner a trial date and upon securing said date filled it in upon the entry and took said entry to Common Pleas Judge Warren C. Young for signature. Upon securing Judge Young's signature, Scott H. Ray, Jr., filed the entry and service of the petition along with copies of the entries setting the matter for trial were served on December 5, 1962. At no time thereafter did petitioners request a continuance or were they ever granted one.

Each of the aforegoing statements is verified by the record in this cause.

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[1] Section 4515.09 et seq. of the Ohio Revised Code.
[2] See Underlined sentences in Appendix A.
[3] See Appendix B.

IV. Deprivation of A Hearing Provided By Law Deprives one of Due Process of Law

Without fault of their own Petitioners have been deprived of their statutory right to contest the election result. Due process of law requires orderly proceedings for redress of grievances and that the courts honor all valid obligations for the conducting of proceedings placed upon it by the legislature.

When the court erroneously refuses to permit a party to have the hearing provided by law it deprives the party of due process of law.

V. This Appeal is Not a Political Question Beyond the Court's Purview

Once the right to redress of grievance arising out of an election has been created and the authority to adjudicate the grievance has been conferred, then the proceedings for redress of grievance has become a judicial matter and certainly within the protection of Due Process provision of the Constitution.

VI. Due Process and Republican Form of Government Are Corollary Principles of Democracy

The Republican form of government guaranteed by Article IV, Section 4, guarantees the use of the ballot within our form of government. The protection of the voting system is a legitimate exercise of legislative powers.

Without the vote change can be wrought only by governmental fiat or revolution of the people.

When the justice of the voting process is questioned proceedings must be provided to reconcile conflicting claims. When such a process is provided but in practice denied to some, then no orderly means to achieve justice remains. When one is no longer able to achieve redress of grievances by rule of law then the society is destined for totalitarianism or anarchy.

CONCLUSION

Greater specification in this application for rehearing is not possible as we have no inkling of the court's reasoning in denying the original petition.

Is the issue of denial of Due Process of Law, by denying Petitioners a hearing on the merits of their complaint which among other things alleges a denial of constitutional rights, a matter of such little importance that it can be written off by the Ohio Supreme Court and the Supreme Court of the United States with the simple phrase "your petition for hearing is denied?" Are the issues raised and the allegations made so inconsequential that petitioners are entitled to no more than this from our highest courts?

Are Petitioners loses—of the right to a just election, and the right to engage in a lawful occupation—too slight to warrant the attention of the courts of last resort?

Certainly this court must answer the above questions in the negative. Having answered the questions in the negative it must bring this case before it for review by allowance of the Petition for Writ of Certiorari.

Respecfully submitted,

SCOTT H. RAY, JR.
8 S. Broadway
Lebanon, Ohio

LOUIS C. CAPELLE
505 Walnut Street
Cincinnati, Ohio
Attorneys for Petitioners.

CERTIFICATE

I, Scott H. Ray, Jr., one of the counsel for Petitioners hereby certify this Application For Rehearing is presented in good faith and not for the purposes of delay and upon the belief that the same is required in order to obtain substantial justices in the within cause and further in an attempt to have this case heard for the first time on its merits.

/s/ SCOTT H. RAY, JR.
SCOTT H. RAY, JR.

APPENDIX A

(Filed April 9, 1963)

IN THE COMMON PLEAS COURT
COUNTY OF WARREN, STATE OF OHIO

Case No. 25201

NELSON BRYANT, et ak, *Plaintiff,*

v.

CHARLES K. MOORE, et al., *Defendant.*

DECISION

YOUNG, J.

This matter is before the Court on the motion of the contestees to dismiss the contest for the reason that the same has not been heard within th time specified by statute.

Both contestees and contestors cite the case of *Jenkins* v. *Hughes*, 157 O. S. 186, and in addition contestees cite *McCall* v. *Board of Education*, 169 O. S. 50 and *Williams* v. *O'Neill*, 142 O. S. 467.

The syllabi in the *McCall* case are both strongly favorable to contestees' position in this case. The first syllabus stating that the prescribed procedure must be strictly followed and the second indicating that where "the hearing was not set in compliance with the statute, that no request

for the setting of such hearing was made . . . , the judge with whom the petition was filed HAS NO ALTERNATIVE but to dismiss the same, on motion of the contestee, for lack of jurisdiction and authority to proceed."

While a careful reading of the decision may raise some doubts as to whether the strong language in the second syllabus is warranted, nevertheless, that is the real import of the decision.

The decision also disposes of the question of the role and responsibility of the Court in connection with the prescribed statutory steps with this language, "but some duty devolves upon the contestor, who inaugurates the contest, to see that this is accomplished."

The file in this matter fails to indicate that the contestors have, at any time, requested that the contest be set for trial and indeed the record indicates that "interrogatories of contestors" were filed by contestors on February 25, 1963, some eighty seven (87) days after the filing of the contest. (Emphasis added)

It is therefore the decision of the Court that upon the cited authority requiring strict construction of the statutes involved that the motion of contestees must be sustained.

Counsel for contestees may prepare an entry conforming to this decision, providing for the dismissal of the action at contestors' expense and reserving their exceptions to this decision.

APPENDIX B

STATE OF OHIO, WARREN COUNTY
COURT OF COMMON PLEAS

Case No. 25201

NELSON BRYANT, et al., *Contestors,*

v.

CHARLES K. MOORE, et al., *Contestees.*

ENTRY

Whereas, a Petition has been filed in the within matter to contest the election of certain Questions and Issues in South Lebanon, Ohio, and whereas, certain persons are enumerated as Contestees, it is ordered, adjudged and decreed: That the Clerk of this Court shall cause copies of Contestors' Petition and this Entry to be served upon the Contestees namely:

Charles K. Moore
125 King Avenue, South Lebanon, Ohio;
Mervin Rudd
335 Pleasant Street, South Lebanon, Ohio;
Marvin Byrd
29 Pleasant Drive, South Lebanon, Ohio;
H. C. Smith
350 Pleasant Drive, South Lebanon, Ohio; and
Pearl Burns
360 Section Street, South Lebanon, Ohio.

in the same manner as a summons in a civil action, notifying them of the filing of the Petition and that they shall have ten (10) days from the time service has been made upon them in which to answer the Petition, and that said Petition will come on for hearing on the *19th*[1] day of December, 1962, at 9:00 o'clock A.M. at the Court House in Lebanon, Ohio.

/s/ WARREN C. YOUNG
Judge

s/ SCOTT H. RAY, JR.
SCOTT H. RAY, JR.
Attorney for Contestors

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[1] 19th is handwritten in the original.